IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22/07/2004.

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CIVIL REVISION PETITION NPD. No.1755 OF 2003
AND
C.M.P.No.18430 OF 2003

V.K.K.Nair ... Petitioner

-Vs-

Mr.D.Shittal Kumar ... Respondent

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure for the relief as stated therein.

!For petitioner : Mr.G.Dhesinghu

^For respondent : Mr.A.Venkatesan

:ORDER

The above Civil Revision Petition is directed against the fair and decretal order dated 31.7.2002 made in I.A.No.6778 of 2002 in O.S.No.6 037 of 2001 by the Court of VIII Assistant Judge, City Civil Court, Chennai.

2. Tracing the history of the above Civil Revision Petition, what comes to be known is that the respondent herein has filed the above suit in O.S.No.6037 of 2001 for recovery of a sum of Rs.37,500/= together with interest at the rate of 30% p.a. and for costs; that the petitioner herein, who is the second defendant in the above suit, has filed an Interlocutory Application in I.A.No.6778 of 2002 under Order 37 Rule 3(5) C.P.C seeking leave to defend the suit; that the lower Court has dismissed the above application on 31.7.2002 on the ground that the petitioner/defendant has not raised any triable issue in the suit. It is only testifying the validity of the said fair and decretal order, the petitioner/defendant has come forward to file the above civil revision petition on certain grounds as brought forth in the grounds of revision.

3. During arguments, the learned counsel appearing on behalf of the petitioner, besides giving a picture as to what was the petition before the lower Court, the defence taken by the other side and the decision arrived at

by the Court below, would also cite the following judgments:

1. 2001(3) CTC 420 (V.SAMUEL vs. THABAK FINANCE CORPORATION, REP.BY ITS PARTNER S.MADANCHAND AND JHABAK)
2. 1998(II) CTC 382 (SUNIL ENTERPRISES AND ANOTHER vs. SBI COMMERCIAL AND INTERNATIONAL BANK LTD.)
3. (1976) 4 SCC 687 (M/s.MECHELEC ENGINEERS & MANUFACTURERS vs. M/s. BASIC EQUIPMENT CORPORATION)
4. AIR 1958 SC 321 (SANTHOSH KUMAR vs. BHAI MOOL SINGH)

4. So far as the first judgment cited above is concerned, a learned single Judge of this Court has held:

"... having regard to the stand taken by the defendant that he had not received any money, the disputes can be raised only on framing proper issues and taking evidence. The Court below was in error in deciding the issue at the inception itself as if the defendant did not raise any proper issue and that there is no triable issue."

5. In the second judgment cited above, the Honourable Apex Court would sum-up the propositions laid down in the judgments (3) and (4) referred to above as follows:
"(a)If the defendant satisfies the court that he has a good defence to the claim on merits, the defendant is entitled to unconditional leave to defend.
(b) If the defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defence, although not a possibly good defence, the defendant is entitled to unconditional leave to defend.
(c)If the defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is, if the affidavit discloses that at the trial he may be able to establish a defence to the plaintiffs claim, the court may impose conditions at the time of granting leave to defend - the conditions being as to time of trial or mode of trial but not as to payment into court or furnishing security.

(d) If the defendant has no defence, or if the defence is sham or illusory or practically moonshine, the defendant is not entitled to leave defend.

(e) If the defendant has no defence or the defence is illusory or sham or practically moonshine, the court may show mercy to the defendant by enabling him to try t prove a defence but at the same time protect the plaintiff imposing the condition that the amount claimed should be paid into court or otherwise secured."

In view of the extraction of the above propositions laid down by the Honourable Apex Court in the second judgment cited above and in full consideration of the principles embodied in the judgments cited (3) and (4) above, extracting from the Judgments No.3 and 4 also is unnecessary. Citing the above judgments, the learned counsel for the petitioner would pray to set

aside the order of the Court below.

6. On the contrary, the learned counsel appearing on behalf of the respondent would only adhere to the lower Court order and extracting certain relevant portions therefrom, would conclude that simply to deny the execution of the pronote, the petitioner has come forward to file such an application and no triable issue has been raised by the petitioner and hence the Court below has rightly rejected his claim. On such arguments, the learned counsel for the respondent would pray to dismiss the above civil revision petition.

7. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, so far as the first judgment rendered by the learned single Judge of this Court, cited No.(1) above is concerned, generally it is averred that 'disputes can be raised only on frami ng proper issues and taking evidence'. This is common in all other matters wherein generally trial is the answer. But, so far as Order 37 Rule 3(5) CPC is concerned, the position of law is different wherein unless the defendant is in a position to show that he has got triable issues in such money suits and applies on such summons for leave to defend such suit, he would not be permitted to defend the suit and unless the defendant is in a position to satisfy the Court that he has a substantial defence to raise or that the defence intended to be put up is raised, it is not incumbent on the part of the Court to grant leave. In such event, even if an attempt is made on the part of the defendant to show the substantial defence and if the same is frivolous or vexatious, no leave could be granted, as per proviso No.1 to the above Section. According to Proviso No.(2) of the same Section, 'where a part of the amount claimed by the plaintiff is admitted by the defendant to be due for him, leave to defend the suit shall not be granted unless the admitted amount is deposited by the defendant in the Court'.

8. While the position of law is such, it cannot be so easily said that generally in all cases of such nature, the defendant must be given the opportunity to defend and the same cannot be denied preliminarily. It cannot also be said that the disputes can be raised only on framing proper issues and taking evidence, in which event, almost the trial procedure will be over and the Courts will be left with the choice of only rendering the judgments. Therefore, this proposition laid down by the learned single Judge of this Court cannot be held either valid or capable of being followed and this Court is not in a position to accept this proposition of law.

9. So far as the second judgment covering up the third and fourth judgments also is concerned, to put it in a nutshell, the defendant should satisfy the Court that he has a good defence on merits, that the defendant should raise triable issues indicating that he has a fair, bonafide and reasonable defence and if it is not there and if the defence is sham or illusory, the defendant is not entitled to defend in which event, the Court may on ground of mercy enable the defendant to try to prove the defence but protect the plaintiff imposing the condition that the amount claimed should be paid into court or otherwise secured.

10. So far as the case in hand is concerned, the trial Court is not at all able to find any valid defence or triable issue in the whole of the case put up by the petitioner/defendant to consider to grant leave adhering to the facts and circumstances of the case as it could be seen from the fair order of the lower Court. Therefore, within the parameters set by law and the propositions of the Honourable Apex Court, the trial Court has fairly concluded that the defendant has nothing to put forth in his defence as a result of which the trial Court has ultimately dismissed the application. Therefore, this Court does not find any valid or tangible reason to interfere with such a well considered and merited fair and decretal order passed by the trial Court in rejecting the claim of the petitioner/defendant and hence the following order:

In result,
(i) the above civil revision petition does not merit acceptance and the same is liable to be dismissed and is dismissed accordingly.
(ii) The fair and decretal order dated 31.7.2002 made in I.A.No.6778 of 2002 in O.S.No.6037 of 2001 by the Court of VIII Assistant Judge, City Civil Court, Chennai is hereby confirmed.

However, in the circumstances of the case, there shall be no order as to costs.

Consequently, C.M.P.No.18430 of 2003 is also dismissed.

Index : Yes
Internet: Yes

Rao

To

The Registrar,
City Civil Court,
Chennai.

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